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**OFFICE OF PETITIONS**

In re Application of

Dubois, et al.

Application No. 09/838,809

Filed: April 20, 2001

Attorney Docket No. 04286.00010

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment, filed June 9, 2009.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is granted.

This application was held abandoned on August 4, 2008, after it was believed that a timely appeal brief was not filed after the mailing of the Notice of Panel Decision from Pre-Appeal Brief Review on June 11, 2008. The notice set an extendable period of one month from its mailing date in which to file an appeal brief, which would end on July 11, 2008, or the balance of the two month period following the filing of the Notice of Appeal which expired August 3, 2008, whichever was longer. The receipt date for the Notice of Appeal, June 3, 2008, is being used in determining the timeliness of the Appeal Brief filed January 5, 2009, because the period in which to file an appeal brief was longer based on receipt date of the Notice of Appeal. A Notice of Abandonment was mailed January 5, 2009, stating that no response was received.


A review of the application file history reveals that an Appeal Brief was filed January 5, 2009, with a request for an extension of time within the fifth month. The Notice of Panel Decision from Pre-Appeal Brief Review states explicitly that "...the time period for filing of the appeal brief is extendable under 37 CFR 1.136 based upon the mail date of this decision or the receipt date of the Notice of Appeal, as applicable." Pursuant to 37 CFR 1.136(a)(1), the time period for filing an Appeal Brief after the mailing of the Notice of Panel Decision from Pre-Appeal Brief Review, or in this case the date the Notice of Appeal was received, is extendable five additional months as the time period for filing an Appeal Brief is not set by statute and does not fall under of the exceptions provided in 37 CFR 1.136(a)(1). Based on the aforementioned, it appears that the application was improperly held abandoned as the Appeal Brief was received prior to expiration of the maximum period for reply. The holding of abandonment is withdrawn, accordingly.

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Further inquiries regarding this decision may be directed to the undersigned at (571) 272-3222.

The application file is being forwarded Technology Center 1700, GAU 1794 for further processing.

A handwritten signature in black ink, appearing to read "Kenya A. McLaughlin".

Kenya A. McLaughlin  
Petitions Attorney  
Office of Petitions